

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SETONDI NAHUM,

*Plaintiff,*

v.

THE BOEING COMPANY, *et al.*,

*Defendants.*

CASE NO. 2:19-cv-1114-BJR

ORDER DENYING PLAINTIFF'S  
MOTION TO COMPEL RESPONSE TO  
SUBPOENA ISSUED BY THE PLAINTIFF  
TO SAFRAN ELECTRICAL AND POWER  
SYSTEMS

**I. INTRODUCTION**

Before the Court is Plaintiff's motion to compel compliance with a third-party subpoena to Safran Electrical & Power USA L.L.C. ("Safran"). Mot. to Compel Resp. to Subpoena Issued by the Pl. to Safran, Dkt. No. 99 ("Mot."). Having reviewed the Motion, the opposition thereto, the record of the case, and the relevant legal authorities, the Court will deny Plaintiff's Motion. The reasoning for the Court's decision follows.

**II. BACKGROUND**

The Court has set forth the facts of this case in multiple previous orders. *See* Dkt. Nos. 42, 62, 77, 81, 86. In brief, Plaintiff is a former employee of Defendant The Boeing Company ("Boeing"), who claims that Boeing discriminated and retaliated against him leading to his termination from employment. Through numerous motions to dismiss and motions to reconsider those dismissals, only Plaintiff's claims for discrimination, harassment (hostile work

environment), and libel remain. *See* Dkt. Nos. 42 (Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss), 47 (Amended Complaint), 62 (Order Denying Plaintiff’s Motion for Reconsideration and Denying Defendants’ Motion to Dismiss), 65 (Minute Order Denying Plaintiff’s Motion for Reconsideration of Court’s Order Denying Motion for Reconsideration).

On August 26, 2020, Plaintiff issued a third-party subpoena to Safran seeking records. *See* Mot. at 2; *see also* Mot., Ex. B, Dkt. No. 99-1 at 10. According to Plaintiff’s Amended Complaint, he worked at Safran, which is a subcontractor of Boeing, and produced quality audits critical of Boeing. *See* Am. Compl. at 11, 33–36. In the course of conducting a skills rating review of Plaintiff, Boeing required Plaintiff to submit the audits. Plaintiff claims that after reviewing these critical reports, Boeing decided to retaliate against him.

Plaintiff asserts Safran has failed to respond to his subpoena and requests that the Court order Safran to do so. *See* Mot., Dkt. No. 99. Defendants contend the subpoena is untimely and irrelevant to Plaintiff’s remaining claims. Defs.’ Opp’n to Pl.’s Mot. to Compel Resp. to Subpoena, Dkt. No. 103 (“Resp.”).

### III. DISCUSSION

#### A. Timeliness

Plaintiff’s subpoena was issued on August 26, 2020, and noted for response by September 9, 2020, Mot., Ex. B, Dkt. No. 99-1 at 11. Discovery in this matter closed on September 2, 2020. Order Setting Trial Date and Related Dates, Dkt. No. 58. Defendants point out that enforcing the subpoena would result in prejudice to them in that, since discovery is closed, they would be unable to take depositions on the substance of the documents.

“A [third-party] subpoena pursuant to Federal Rule of Civil Procedure 45 . . . is not exempt

1 from discovery deadlines in scheduling orders.” *InfoDeli, LLC v. Amazon Web Servs., Inc.*, No.  
2 17-cv-0281, 2017 WL 1426187, at \*2 (W.D. Wash. Apr. 21, 2017) (quoting *Dag Enterprises, Inc.*  
3 *v. Exxon Mobil Corp.*, 226 F.R.D. 95, 104 (D.D.C. 2005)). As both the subpoena’s response date  
4 and Plaintiff’s Motion are past the Court’s September 2 discovery deadline, and since granting  
5 Plaintiff’s motion would require the reopening of discovery, the Court considers Plaintiff’s Motion  
6 to be a request to extend the discovery deadline.

7       Once a Court’s deadline has passed, a movant must establish good cause to amend the  
8 Court’s scheduling order. Fed. R. Civ. P. 16 (b)(4); *see also DRK Photo v. McGraw-Hill Glob.*  
9 *Educ. Holdings, LLC*, 870 F.3d 978, 989 (9th Cir. 2017) (“[w]here ... a party seeks leave to amend  
10 after the deadline set in the scheduling order has passed, the party’s request is judged under [FRCP]  
11 16’s ‘good cause’ standard rather than the ‘liberal amendment policy’ of FRCP 15(a)”). The  
12 “central inquiry” in establishing good cause is “whether the requesting party was diligent in  
13 seeking the amendment.” *DRK Photo*, 870 F.3d at 989. The Court may also consider the prejudice  
14 to the non-movant when determining whether good cause exists to amend a deadline. *See Johnson*  
15 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

16       Here, Plaintiff has not demonstrated good cause. He has long known of Safron’s role in  
17 his claims. Safron, and Plaintiff’s quality audits, appear in Plaintiff’s original Complaint, which  
18 is dated July, 18, 2019. Compl., Dkt. No. 1 at 11, 31–34. Thus, Plaintiff has long known the  
19 relevance of the evidence he now seeks, but has failed to explain why he waited until the last  
20 minute of discovery to seek such information.

21       Additionally, Plaintiff did not file his Motion until October 18, 2020. This is over a month  
22 past the date he noted in his subpoena for Safron’s response. This delay is significant because in  
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24  
25

1 the interim the parties have filed their motions for summary judgment and reopening discovery at  
2 this time would require redoing the pending motions. Based on the foregoing, the Court finds that  
3 Plaintiff has not been diligent in pursuing the evidence he seeks or enforcing his subpoena.

4 Further, the Court finds that the prejudice to Defendants weighs heavily in favor of denying  
5 the extension Plaintiff seeks. The parties are midway through briefing motions for summary  
6 judgment. Plaintiff seeks no less than a complete reopening of discovery, as Defendants would  
7 have to conduct follow-on discovery and depositions in response to Safran's reply and, most likely,  
8 have to rebrief their summary judgment motion.  
9

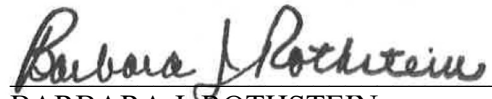
#### 10 **B. Relevance**

11 Examining the evidence which Plaintiff seeks, the Court determines its relevance is  
12 minimal. While Plaintiff argues that these materials relate to his discrimination claim, he fails to  
13 establish that this is the case. Instead, the information Plaintiff seeks from Safran relates to the  
14 audits he prepared while employed there. These audits form the basis of Plaintiff's claim that  
15 Boeing retaliated against him, a claim which this Court has already dismissed. As such, the  
16 relevance of the information sought, weighed against the prejudice to Defendants, establishes that  
17 Plaintiff has failed to show good cause to amend the Court's discovery deadline.  
18

#### 19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court hereby DENIES Plaintiff's motion to compel  
21 compliance with a third-party subpoena.

22 DATED this 23rd day of October, 2020.

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25 BARBARA J. ROTHSTEIN  
UNITED STATES DISTRICT JUDGE